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SENSITIVE
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SUBJECT: NIGERIA: ELECTRICITY REGULATOR DEVELOPING POWER
DISTRIBUTION AGREEMENT

REF: A. LAGOS 143
[1](#)B. LAGOS 415

[1](#)1. (SBU) Summary: On December 17, the head on the Nigerian Electricity Regulatory Commission (NERC), Dr. Ransome Owan said that NERC is developing a memorandum of understanding for use by state governments and the Power Holding Company of Nigeria (PHCN) to permit states to keep some of the power generated by state financed power plants. Currently all power is sent to the national grid with no guarantee that the state that paid for the power plant will benefit from it. The Commission recently heard arguments in a dispute between Lagos State and PHCN over the distribution of power from the AES power barges located in Lagos. Owan lamented the GON's failure to provide sovereign risk guarantees for power purchase agreements and said the dispute with AES Nigeria is giving the country a bad reputation among international power investors. The GON plans to round out the national grid that connects power plants in the south with northern customers. As currently constructed, the national grid is not a loop and any break in the trunk line that runs from the south to the north disrupts power to follow-on customers. The planned MOU is a positive step that should encourage states to invest further in power generation projects. The U.S. Mission and NERC also have a MOU for capacity building and technical assistance from the state of Michigan. End Summary.

Regulator to Develop State/PHCN Power Sharing MOU

[1](#)2. (SBU) In a meeting with the Consul General on December 17, Dr. Ransome Owan, the head of NERC and a former regulator in the United States, said his organization is developing a memorandum of understanding that can be used by state governments and PHCN as power sharing agreements to facilitate state investment in power generation facilities. Several states are funding, or are planning to fund, independent power projects with the assumption that some of the power will be dedicated to customers in the state. Currently there is no formal mechanism for making such an arrangement. Power is sent by the power plant to the national grid and PHCN determines where that power is distributed. Under the planned MOU, if a state finances a power project, PHCN will promise to transmit some incremental power from that plant back to the state over and above what the state currently receives from the national grid. As an example, Owan cited an Akwa Ibom State funded power plant which will generate 190 MW per day. Under the MOU, Akwa Ibom

is guaranteed 70 MW of power above what it is currently receiving from the national grid; PHCN is free to distribute the remaining 120 MW across the country as needed. PHCN will still charge the state customers for the electricity; the MOU will simply guarantee the electricity will be available. NERC is formalizing a blanket MOU that can be used by any state and it should be ready in a few months.

13. (SBU) To emphasize the importance of an MOU, Owan said he had come to Lagos with other NERC commissioners to hear arguments by lawyers from Lagos State and PHCN over the distribution of power from the AES Nigeria power barge facility in Lagos. Lagos State partially funded construction of the 270 MW facility, with the understanding most of that power would be distributed to customers in Lagos State, in addition to the power the state was already receiving from PHCN. Lagos State does not believe it is receiving the additional power as promised and is seeking an order to force PHCN to supply it with more electricity. For its part, PHCN argues that NERC does not have jurisdiction and the case must be brought to a federal court or to an arbitrator in London as specified in the AES contract. NERC expected to rule on whether it has jurisdiction by January 7. (Note: No ruling had been published as of January 15. End Note.)

Sovereign Risk Guarantees Needed to Attract Investors

14. (SBU) When asked about the view of the international investment community towards the electricity sector, Owan acknowledged that it is difficult to arrange financing for

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such large scale projects in Nigeria even in the best of times. He criticized a recent government decision (which he said he only read about in the newspapers) not to provide sovereign risk guarantees for new power purchase agreements. Since the electricity buyer, PHCN, is "not a creditworthy" institution, power plant investors will not trust it to make timely, complete payments. Additionally, he thinks the GON's dispute with AES Nigeria over the terms of its power purchase agreement is giving the country a black eye among international power investors (Ref A) (Note: This dispute is over the power purchase agreement between PHCN and AES and is not connected to the dispute between Lagos State and PHCN noted above. End Note.) The GON is too focused on the short term costs of the contract and does not realize the opportunity cost of deterring investors and forgoing new electricity generation projects. Owan had not heard of the payment dispute between PHCN and the Agip/ConocoPhillips consortium that owns the Kwale-Akpai power plant, but he urged the companies to reach out to NERC if they are having problems with PHCN (Ref B).

Completing the Transmission Loop

15. (SBU) On the subject of the nation's transmission grid, Owan said PHCN plans to construct a transmission line that will run from power plants in the Niger Delta to an area north of Jos, thereby "closing the loop" on Nigeria's power grid. Currently, in northern Nigeria, the grid really isn't a grid as only one main transmission line connects the southern grid to Nigeria's northern cities. If there is a break in the line, electricity to all of northern Nigeria is cut off. Owan did not have a timeline for completion of the project.

16. (SBU) Owan lamented the slow pace of power plant construction under the National Integrated Power Project (NIPP), the GON's plan to build or expand eight thermal power plants over a three year time frame to quickly boost the nation's supply of electricity. Suffering from delays and accusations of corruption and poor performance by the local contractors, Owan thought that the plan was overly ambitious and tried to build too many plants at once. In his view, the

GON should order contractors to build one or two power plants at a time rather than spreading the limited ability of local contractors over dozens of projects. (Note: One local firm, Rockson Engineering, is building four of the eight NIPP power plants, while building transmission lines and several state financed power plants. Since it started work in 2006, it has not completed a NIPP power plant. End Note.)

¶7. (SBU) Owan, a dual national American/Nigerian, has two more years left in his five year term as the head commissioner at NERC. Commissioners are limited to two, five year terms and he indicated he would accept reappointment. Owan admitted he is pushing NERC boundaries, attempting to perform some roles he sees going unfilled by other federal ministries. For instance, under the guise of quarterly agency status reports mandated by the National Assembly, NERC plans to publish and present to the President and National Assembly a comprehensive update on the sector to include the status of all power related projects.

¶8. (SBU) Comment: The plans for a NERC-facilitated MOU between states and PHCN is an interesting step in the right direction. Several southern state governors appear eager to by-pass the federal government and fund power projects from their states' cash flow. If those states can also figure out a way to provide power payment guarantees as well, we could see some real progress towards attracting outside investors in public private partnerships in the power sector. End Comment.

¶9. (U) This cable cleared with Embassy Abuja.
BLAIR